

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RICARDO R. RIOS,

Plaintiff,

vs.

Civ. No. 98-801 LH/LCS - ACE

UNITED STATES OF AMERICA,

Defendant.

**THE PARTIES' AGREED TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

COME NOW the Defendant United States of America through John J. Kelly, United States Attorney, and Raymond Hamilton, Assistant U.S. Attorney, and the Plaintiff Ricardo Rios through David Duhigg of Duhigg, Cronin, Spring & Berlin, P.A., and Tim Chelpaty, Attorney at Law, and submit the following Agreed Proposed Findings of Fact and Conclusions of Law:

PROPOSED FINDINGS OF FACT

1. The plaintiff, Ricardo Rios, filed this action pursuant to the Federal Tort Claims Act seeking damages for an accident occurring August 6, 1997 at Holloman Air Force Base.
2. This cause of action is brought by the plaintiff against the United States of America under 28 U.S.C. §§ 1346 (b) and 2671 **et seq.**
3. On August 6, 1997, plaintiff, an employee of Foxworth-Galbraith Lumber Company, was assigned to drive a load of peat moss to the Holloman Air Force Base Civil Engineering (CE) facility.

4. Pallets on the truck were constructed of wood.
5. Mr. Rios loaded the pallets onto the truck at Foxworth-Galbraith's yard in Alamogordo the morning of August 6, 1997.
6. After his arrival, plaintiff released the five straps used to secure the five pallets.
7. Also, after his arrival, Mr. Rios went inside the CE facility and took his paperwork in to "check in."
8. At one point, plaintiff was opposite a pallet being off-loaded in order to "roll up" a strap.
9. The peat moss comes to plaintiff's employer, Foxworth-Galbraith Lumber Company, already loaded onto pallets.
10. As a result of the August 6, 1997 incident, plaintiff fractured his right wrist.

PROPOSED CONCLUSIONS OF LAW

1. The Court has jurisdiction of this matter.
2. Venue is proper.

Respectfully submitted,

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